IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA
ERIE DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	No. 1:10-cv-00237-SJM
	)	
v.	)	
	)	
EBERT G. BEEMAN, *et al.*,	)	
	)	
Defendants.	)	

UNITED STATES' RESPONSE TO DEFENDANT EBERT BEEMAN'S MOTION FOR RELIEF

The United States responds to the civil matters raised in Defendant Ebert Beeman's *Motion for Relief under Fed. R. Civ. P. 60(b)* (docket no. 58):

Beeman asserts that this Court made a mistake in entering a judgment against him, and that future application of that judgment is no longer equitable. *See* Fed. R. Civ. P. 60(b)(1), (5). The so-called "mistake" was that the Court supposedly failed to consider information that Beeman actively withheld. Beeman cannot seek relief from a judgment based on information that he chose to withhold.

Beeman also asserts that counsel for the United States engaged in misconduct in post-judgment negotiations. Post-judgment negotiations, however, are irrelevant to whether Beeman received a full and fair hearing on his claims and defenses before judgment was entered against him. *See* Fed. R. Civ. P. 60(b)(3). Beeman's motion is accordingly meritless.

ARGUMENTS

"The finality of judgments is a cornerstone of our judicial system." *Harris v. Martin*, 834 F.2d 361, 366 (3d Cir. 1987). Accordingly, a motion under Fed. R. Civ. P. 60 cannot relieve a party from "the consequences of decisions deliberately made, although subsequent events reveal that such decisions were unwise." *In re Salem Mort. Co.*, 791 F.2d 456, 459 (6th Cir. 1986).

Here a final judgment on the money judgment was entered on July 6, 2011, and an order foreclosing the tax liens and order the sale of the real properties was entered on July 22, 2011. (Docket nos. 43, 48.) Beeman filed notices of appeals for both judgments, and those appeals are still pending. (*See* case nos. 11-3080, 11-3304 (3d Cir.).) Because of these pending appeals, this Court cannot grant Beeman's Rule 60 motions. Instead, under Fed. R. Civ. P. 62.1, this Court can only deny the motion, defer consideration, or state that it would grant the motion if the Court of Appeals remanded it for those purposes. Fed. R. Civ. P. 62.1(a); *Judkins v. HT Window Fashions Corp.*, 704 F. Supp. 2d 470, 498 (W.D. Pa. 2010).

I. Beeman is not Entitled to Relief from this Court's Judgment.

A. The Court did not make a "mistake" under Fed. R. Civ. P. 60(b)(1) in rendering its judgment.

Beeman asserts that he recently filed his federal income tax return for the year 2003. Beeman's federal income tax return for that year was due on April 15, 2004. 26 U.S.C. § 6072. Beeman never provided the United States or this Court with

documents to substantiate the cost of his various stock sales for that year. Beeman ignored his duty and numerous opportunities to substantiate these costs and instead chose to waste the Court's time arguing about "sovereign citizenry"and other frivolous arguments.

Beeman does not dispute that the United States based its tax assessments on funds that he received. Beeman simply asserts that the Court made a "mistake" because it failed to correctly guess his costs of business associated with his stock sales. Yet it was Beeman's burden to come forward and prove those costs. *E.g., Adler v. Comm'r of Internal Rev.*, 2011 WL 3796655, *2 (3d Cir. Aug. 29, 2011) ("Tax deductions and credits are a matter of legislative grace. Thus, the burden is on the taxpayer to show that the expenses are deductible." (internal citations omitted).); *see generally, INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992); *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440 (1934).

Relief from a judgment based on a "mistake" under Rule 60(b)(1) "is not available to allow a party merely to reargue an issue previously addressed by the court when the reargument merely advances new arguments or supporting facts which were available for presentation at the time of the original argument." *Cashner v. Freedom Stores, Inc.*, 98 F.3d 572, 577 (10th Cir. 1996); *In re Express Car & Truck Rental, Inc.*, 455 B.R. 434, 439 (Bankr. E.D. Pa. 2011) (" Rule 60(b) is not read liberally to give a disappointed party an opportunity to relitigate his or her case, revisit issues the court has already considered in its judgment, advance new arguments, or present facts that

were otherwise available at the time of judgment. "); *see* 11 Wright & Miller, *Federal Practice and Procedure*, § 2858 (noting that the failure "to present on a motion for summary judgment all of the facts known to him that might have been useful to the court," and "reliance on an unsuccessful legal theory" are "affirmative tactical decisions for which relief will not be granted."). Beeman cannot choose to keep the facts from the Court and wait until after a judgment was entered to litigate this issue.

Moreover, allowing reconsideration in this case would encourage tax defiers to continue to raise their frivolous arguments until the eve of a sale. It is also unfair to allow Beeman to present this new evidence after a summary judgment is entered. *Berckeley Inv. Group v. Colkitt*, 455 F.3d 195, 201 (3d Cir. 2006) (The summary judgment stage of the case is 'put up or shut up' time — the non-moving party must rebut the motion with 'facts in the record[.]'"). By moving after judgment was entered and asking this Court to assume his tax return is true, correct, and complete, Beeman effectively precluded the United States from taking meaningful discovery. Given that the current judgment is a result of Beeman's unwise choices, Beeman's motion for relief based on the Court's alleged mistake should be denied.

B. Beeman cannot seek relief by asserting that the money judgment is "no longer equitable."

Beeman alternatively argues that he should be relieved from this Court's monetary judgment because its prospective application would not be equitable. Fed. R. Civ. P. 60(b)(5). Beeman asserts that he will file his tax returns for the tax years other than 2003 at some unspecified time in the future, and those returns will show that he

has satisfied his tax liability. Beeman cannot meet his burden of proof by merely asking for this Court's trust that he may do something in the future. Even before judgment was entered, such general denials of liability could not overcome the United States' tax assessments. *Anastasato v. Comm'r*, 794 F.2d 884, 888 (3d Cir. 1986); *e.g., United States v. Kavanaugh*, 2009 WL 1177088, *6 (W.D. Pa. April 29, 2009). Certainly they are insufficient to meet Beeman's burden of proof under Rule 60(b)(5).

Moreover, Beeman's motion, as far as it seeks relief under Rule 60(b)(5), is misplaced. Under Fed. R. Civ. P. 60(b)(5), a court may grant relief from a judgment if the judgment "prospectively is no longer equitable." Fed. R. Civ. P. 60(b)(5). This rule, however, only applies to equitable remedies and does not apply to money judgments. *E.g., Marshall v. Board*, 575 F.2d 417, 425 (3d Cir. 1978); *Coltec Indus. Inc., v. Hobgood*, 280 F.3d 262, 271 (3d Cir. 2002). Accordingly, Beeman cannot seek relief under Fed. R. Civ. P. 60(b)(5).

II. The United States' Post-Judgment Negotiations are Irrelevant.

Beeman moves for relief under Fed. R. Civ. P. 60(b)(3) by alleging misconduct by counsel for the United States in post-judgment negotiations. Fed. R. Civ. P. 60(b)(3). To succeed with this motion, counsel for the United States must have engaged "in fraud or other misconduct" that "prevented the moving party from fully and fairly presenting his case." *E.g., Stridiron v. Stridiron*, 698 F.2d 204, 206-207 (3d Cir. 1983). Beeman must prove by clear and convincing evidence that United States' alleged

misconduct prevented him from presenting his case. *E.g., Ames True Temper, Inc. v. Myers Indus., Inc.*, 2007 WL 4268697, *2 (W.D. Pa. Nov. 30, 2007).

Beeman alleges that the United States engaged in misconduct by preventing Beeman from accessing records at his property after he was evicted. Even if true, Beeman cannot argue that he was prevented from presenting his case before judgment was entered. Beeman had access to those records before judgment was entered. And even after judgment and the order of sale were entered Beeman had (at least) a month to remove his personal records. (Docket no. 49, *Order of Sale*, ¶ 4.) Beeman's irresponsibility in putting on his case before judgment or securing his records before being evicted cannot be blamed on the United States. *See Ames True Temper, Inc.*, 2007 WL 4268697, *3 ("It cannot now claim that the defendants should somehow be held responsible for failing to disclose information that plaintiff consciously decided to forego obtaining."). Moreover, it certainly stretches this rule beyond its narrow limits to assert that post-judgment negotiations somehow prevented Beeman from timely presenting his case before the judgment was entered. In short, this Court should not

allow Beeman to somehow set aside judgment because the United States is unwilling to allow Beeman to re-enter his properties after being evicted.

CONCLUSION

WHEREFORE, the United States respectfully requests Beeman's motion to reconsider be DENIED.

Dated: November 7, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this *Response* was served on November 7, 2011 by serving this matter by filing it with the Clerk's CM/ECF system on:

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